

RESOLUTION

SIGNING OF THE PROJECT PROGRAM AGREEMENT – BL1805

Lancaster County

Resolution No. A-18-0016

Whereas: Lancaster County is proposing a transportation project for which it would like to obtain County Bridge Match funds;

Whereas: Lancaster County understands that it must strictly follow all State and local laws, rules, regulations, policies and guidelines applicable to the funding of the project; and

Whereas: Lancaster County and Nebraska Department of Transportation (NDOT) wish to enter into a new Project Program Agreement setting out the various duties and funding responsibilities for the project.

Be It Resolved: by the Board of Commissioners of Lancaster County that:

Todd Wiltgen, Chair of the Lancaster County Board of Commissioners is hereby authorized to sign the attached Project Program Agreement between the Lancaster County and the NDOT.

Lancaster County is committed to providing local funds for the project as required by the Project Program Agreement.

NDOT Project Number: STWD-CBMP(2)

NDOT Control Number: 00974A

NDOT Project Name: County Bridge Match Program

Adopted this 6 day of March 2018 at Lincoln Nebraska.
(Month) (Year)

The Board of Commissioners of Lancaster County

Bill Alamy Jennifer J. Brinkman
Deb Schorr AMUNDSON ABSENT
Todd Wiltgen

Board/Council Member Deb Schorr
Moved the adoption of said resolution
Member Jennifer Brinkman Seconded the Motion
Roll Call: 4 Yes 0 No 0 Abstained 1 Absent
Resolution adopted, signed and billed as adopted

Attest:

Dan Galt
Signature County Clerk

COUNTY BRIDGE MATCH PROGRAM
PROGRAM AGREEMENT

LANCASTER COUNTY
STATE OF NEBRASKA, DEPARTMENT OF TRANSPORTATION
PROJECT NO. STWD-CBMP(2)
STATE CONTROL NO. 00974A
CBMP CONTROL NO. 00974MM
COUNTY BRIDGE MATCH PROGRAM

THIS AGREEMENT is between **Lancaster County**, Nebraska hereinafter referred to as "County," and the State of Nebraska, Department of Transportation, hereinafter referred to as "State," and collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, the Transportation Innovation Act established a new program called the County Bridge Match Program (CBMP), (Neb. Rev. Stat. § 39-2805), and

WHEREAS, the purpose of the CBMP is to promote innovative solutions and provide additional funding to accelerate the repair and replacement of deficient bridges on the county road system, and

WHEREAS, State has developed the program requirements for the CBMP and a project proposed by County has been selected to be funded by the CBMP, and

WHEREAS, County will be responsible for completing all phases of the project, however, State will reimburse County a designated share up to a maximum total dollar amount of County's actual and reasonable costs of only the bridge construction phase of the project, as further described herein, and

WHEREAS, for this project the State's designated share will be 55 percent of the bridge or culvert construction costs, with a maximum State contribution not to exceed \$200,000.00, as more specifically described below, and

WHEREAS, County's CBMP project(s) are described as follows:

C005500640 – JCT US77/S-55E 2N 3.5E at Stream (B 147)

C005504005 – N Edge of Conestoga Lake at Stream (N 19)

WHEREAS, funding for the CBMP sunsets on June 30, 2023; accordingly, the project must be completed by December 31, 2020 in order to maximize the overall number of projects that can be funded as a part of the CBMP, and

WHEREAS, County has designated a point of contact, who will be known for this project as the Project Liaison (PL), and who will be in charge of all aspects of the project from planning through post-construction activities, and

WHEREAS, this agreement is intended to provide the conditions and requirements for County to obtain CBMP funding for County's project, and

WHEREAS, County desires that this project be constructed under the designation of Project No. **STWD-CBMP(2)**, State Control No. **00974A**, CBMP Control No. **00974MM** as

evidenced by the Resolution of County dated the _____ day of _____, 2018, attached as Exhibit "A" and made a part of this agreement.

NOW THEREFORE, in consideration of these facts, and the promises of the Parties, County and State agree as follows:

SECTION 1. DURATION OF THE AGREEMENT

The agreement becomes effective upon the signing of the agreement by State. State intends to sign the agreement after County has signed. The agreement will expire when County's project is finished and final financial settlement has been completed, or as otherwise provided in this Agreement.

SECTION 2. General CBMP Description and Requirements

The CBMP program is generally described in this section. These provisions govern County's project when applicable, unless the specific project description in Section 3 makes any or all of the Section 2 provisions inapplicable.

2.1 Overview. The CBMP is intended to provide matching funds (see Section 3 below), based on the bridge construction costs specified in County's proposal, up to but not to exceed a specified maximum total payment or cap for the bridge construction phase only of the repair or replacement of structurally deficient county bridges. The CBMP encourages innovation in bridge design and construction and allows the bundling of bridge construction sites from one or multiple counties. The CBMP allows the replacement of a bridge with culvert pipes so long as County uses a properly completed hydraulic study to determine the appropriate size of the replacement culverts.

2.2 Project Development and Management. County is solely responsible for all phases of the project, including but not limited to planning, preliminary engineering including obtaining environmental permits, final design, right-of-way, bid letting, construction, construction engineering, operation and maintenance. This project is not a State project and State's involvement in the project is solely for establishing the conditions that must be met for funding to be provided as set out in this Agreement.

2.3 Environmental. County is solely responsible for determining what, if any, environmental permits apply to County's project. County is further responsible for completing all necessary environmental processes and obtaining all needed environmental permits before letting any part of the project to bids.

2.4 Design Criteria. County is solely responsible for the design of the bridge(s) or culverts to be constructed as a part of this project. The project shall be designed to meet or exceed the requirements of the 1) Nebraska Minimum Design Standards, 2) the NDOR (now NDOT) Policy for Design, Load-Rating and Inspection of Public Road Bridges dated May 24, 2010 (a copy of which is attached hereto as Exhibit "B" and incorporated by this reference), and 3) applicable State and local laws and policies. Additionally, the design of any bridges shall incorporate NDOT's approved bridge rail design TL-2 or TL-3 in the plans and shall include the approach guardrail with appropriate anchorages and terminations.

2.5 Costs eligible for Reimbursement. Eligible costs include the labor, materials and equipment necessary for the actual construction of the bridge or culvert project, and may include any other costs identified in the State's acceptance of the project proposal. County will

not be reimbursed for any of its other costs in planning, designing, developing, constructing or managing this project, including construction engineering, management and inspection.

2.6 Time Restriction. County's bridge construction must be completed by December 31, 2020, for the project to be eligible for either of the two payments to be made under this Agreement. No time extensions will be allowed, except in exceptional circumstances. Therefore, time is of the essence in this Agreement.

SECTION 3. COUNTY'S APPROVED PROJECT

County's proposal included a project in Lancaster County. Each project is identified as follows:

County: **Lancaster County**

NBIS Bridge Structure(s): **C005500640**

Project Description: **JCT US77/S-55E 2N 3.5E at Stream (B 147)**

Estimated Cost: **\$400,000.00**

Funding Split: State **\$100,000.00** (of the estimated costs specified in the proposal, capped at State's maximum contribution for **Single County proposal**)

NBIS Bridge Structure(s): **C005504005**

Project Description: **N Edge of Conestoga Lake at Stream (N 19)**

Estimated Cost: **\$350,000.00**

Funding Split: State **\$100,000.00** (of the estimated costs specified in the proposal, capped at State's maximum contribution for **Single County proposal**)

Established proposal State funding Contribution **\$200,000.00**.

State and County agree that the estimated cost for the project in each County is simply an estimate and may change. In the event that the estimate for any individual County's project is revised upward, based on State's analysis of proposed costs, the State's total payment for the individual County project will be revised upward in States discretion no more than 5% or \$5,000, whichever is greater, above State's established funding split set out above. However, any upward adjustment made will not result in the State's contribution exceeding what was specified in the RFP regarding caps on Single Bridge, Multi Bridge Single County and Multi Bridge Multi County proposals.

SECTION 4. COUNTY'S RESPONSIBILITIES

4.1 General.

County shall be responsible for all phases of the planning, obtaining environmental permits, design, construction, operations and maintenance of this project, including but not limited to, preliminary and construction engineering, management, planning, design, right-of-way activities, bid letting, construction, and future operation and maintenance all in accordance with the laws and policies applicable to County road projects. County agrees that its failure to comply with the terms of this Agreement may lead to the State, in its sole discretion, withdrawing funding for the project. Further, County shall also be responsible for the following:

4.2 Professional Performance

County will be solely responsible for the professional performance and ability of County or its Design or Construction Engineering Professional. Examination by State, or any acceptance or use of the work product, will not be considered to be a full and comprehensive examination and will not be considered an approval of the work product which would relieve County or its Design or Construction Engineering Professionals from any liability or expense that would be connected with County's sole responsibility for the propriety and integrity of the professional work to be accomplished by County or its Design or Construction Engineering Professional pursuant to this agreement. That further, acceptance or approval of any of the work by State will not constitute a waiver of any rights of State to recover from County, damages that are caused by County or its Design or Construction Engineering Professional due to error, omission, or negligence of the Consultant in its work. That further, if, due to error, omission, or negligence of County or its Design or Construction Engineering Professional, the plans, specifications, and estimates are found to be in error or there are omissions therein revealed during the construction of the project and revision or reworking of the plans is necessary, County or its Design or Construction Engineering Professional shall make such revisions without expense to State. County or its Design or Construction Engineering Professional's legal liability for all damages incurred by State caused by error, omission, or negligent acts of County or its Design or Construction Engineering Professional will be borne by County without liability or expense to State.

4.3 Timeline for Required Submittals

The following information and/or documents must be submitted to State by the times provided below:

4.3.1 Before County advertises the project for bid letting or begins Construction with County's own forces –

- i. Bridge or Culvert Construction Project, when constructed by a Contractor -- Final Plans Package must be submitted to State for review and approval. The Final Plans Package must include:
 - a. Final Construction Plans and Specifications, sealed and signed by a Nebraska licensed professional engineer.
 - b. Hydraulic Data Sheet, sealed and signed by a Nebraska licensed professional engineer.
 - c. The engineer's estimate of construction costs.
 - d. Load Rating Summary Sheet, including all applicable calculations, sealed and signed by a Nebraska licensed professional engineer. If the new structure is not bridge length, (span less than 20 feet) no Load Rating Summary Sheet is required.
 - e. County's bid documents shall be written so that the bridge construction costs can be readily distinguished from roadway and other non-bridge related project costs.
- ii. Bridge or Culvert Construction Project, when constructed by County's own forces -- Final Plans Package must be submitted to State for review and approval. The Final Plans Package must include:

- a. Final Construction Plans and Specifications sealed and signed by a Nebraska licensed professional engineer.
 - b. Hydraulic Data Sheet, sealed and signed by a Nebraska licensed professional engineer.
 - c. The engineer's estimate of construction costs including a list of materials, and a breakdown of the estimated labor and equipment hours for construction.
 - d. Load Rating Summary Sheet, including all applicable calculations, sealed and signed by a Nebraska licensed professional engineer. If the new structure is not bridge length, (span less than 20 feet) no Load Rating Summary Sheet is required.
- iii. **In the event that County's proposal in Section 3 above, involves more than one culvert or bridge project (bundled), all information and/or documents above must be submitted and accepted by the State prior to County letting the projects for bids or the purchase of project materials. County shall let all bundled projects together in the same letting.**

4.3.2. After County Awards a Construction Contract and/or Receives

Material Invoices – County must submit to State a copy of the executed construction contract or material invoices and a proposed schedule of project construction and completion.

4.3.3. After Project Construction has been completed – County must submit

to State the final project cost documentation for all culverts and bridges constructed, a complete set of as-built plans, and County's certification, on a form provided by State, that the project has been completed. County shall enter, or cause its consultant to enter, the NBIS Initial Inspection data and photographs into State's Bridge Management Software (BrM) database. If the new structure is not bridge length, the County shall notify NDOT to remove the structure from the county bridge inventory.

4.3.4. December 31, 2020—Project Construction must be completed.

4.4 Laws and Bid Letting

County is required to comply with all laws applicable to the development, design, letting and construction of County's bridge or culvert project on a local road or street. County shall be responsible for assuring that its contractor has sufficient training, experience, labor and equipment to properly complete the work. Further, prior to County awarding a contract to a construction contractor, County shall provide to State all needed documentation about all bids received.

4.5 Financial

County shall solely be responsible for the following project costs:

- a. Planning, preliminary engineering including obtaining environmental permits, final design, right-of-way, bid letting, construction engineering, operation, maintenance

and all other project phases with the exception of bridge construction costs, which will be eligible for CBMP funding.

- b. All expenses not paid by State under this agreement (the parties understand that all grading and roadway construction costs outside the limits of the bridge will not be paid by State with the exception of guardrail).

4.6 Failure to complete construction as designed

If County does not complete the construction of this project as described or shown on the approved plans, specification and estimates or as amended by any approved change orders, County shall notify State and may be required by State, in its sole discretion, to repay State any funds provided by State for the project. State will not participate in the costs of any change order proposed by County unless County presents to State 1) the details of the proposed change order, and 2) a detailed explanation of the reasons for the change order, and State determines, in its sole discretion, that the change order will be funded as a part of this project.

4.7 Maintenance and Environmental Commitments

Upon project completion, County shall own the bridge and have jurisdictional responsibility over the bridge. County shall maintain the constructed improvements and continue to meet environmental commitments at its own expense, and agrees to make provisions each year for such costs. County will release and hold harmless State, from any suits brought against State arising out of County's design, construction, operation, and maintenance of or related to the project.

4.8 Change of Scope

County understands that there are limited funds available for this bridge construction and that State reserves the right, in its sole discretion, to decline funding for any scope changes proposed by County for the bridge.

4.9 Indemnification

County agrees to hold harmless, indemnify, and defend State from all claims and liability due to the error, omission, or negligence of County or those of County's agents or employees arising out of County's project and the terms of this agreement.

SECTION 5. STATE'S RESPONSIBILITIES

State shall be solely responsible for the following:

5.1 Submittals

State shall accept the documents submitted by the County under Section 4.3, Timeline for Required Submittals.

5.2 Financial

State's total financial obligation for the project shall be as specified in Section 3. State shall pay its share of the project to County, based on the following schedule:

- a. Upon County's award of a construction contract or submittal of invoices for materials or rental equipment - 70 percent of State's share. For projects being constructed with County's own forces, this initial payment will be 70 percent of the State's funding split specified in Section 3.

- b. Upon County's certification of project completion, submittal of all construction invoices and final review by State – the remaining 30 percent of the State's share up to the maximum total dollar amount.

SECTION 6. SUSPENSION OR TERMINATION

6.1 Suspension

State, in its sole discretion, reserves the right to suspend this agreement when State determines that there are issues related to project performance, responsiveness, or quality that must be corrected by County. State shall provide County with notice of the suspension including a description of the reason(s) for the suspension, a timeframe for County to correct the deficiencies, and when applicable, a description of the actions that must be taken for State to revoke the suspension.

A suspension may also be imposed by State for any of the reasons listed in the Termination subsection below, or for any significant change in the scope of the project that has not been previously approved by State.

Failure to correct the deficiencies identified in a suspension will be grounds for the loss of funding for the project and for termination of this agreement.

6.2 Termination

This agreement may be terminated for the following reasons:

- a. State and County, by mutual written agreement, may terminate the agreement at any time.
- b. State may terminate this agreement for the following reasons:
 - 1. Failure of County to provide the submittals or meet deadlines as set out in this agreement.
 - 2. County's failure to cause the project to be constructed according to the approved project plans and specifications.
 - 3. Loss of or a lack of available funds for the project.
 - 4. County's breach of a provision of this agreement.
- c. Prior to State terminating this agreement, State shall provide written notice to County of the basis for termination and, when applicable, provide the County sixty (60) days to properly resolve all issues identified by State.
- d. County may terminate the agreement by providing written notice of termination to State, subject to subsection e below.
- e. Whenever the project is terminated for any reason provide in Section 6.2(b) of this agreement, County shall be solely responsible for all costs associated with County's project and County shall promptly repay all previous payments made by State.

6.3 Review and Audit

State reserves the right, but not the duty, to review County's work related to this project and reserves the right to complete a financial audit of County records for the project. County shall repay State any funds determined by audit to not be eligible or participating for this project.

SECTION 7. DRUG-FREE WORKPLACE

County shall have an acceptable and current drug-free workplace policy on file with State.

SECTION 8. FAIR EMPLOYMENT PRACTICES

If County performs any part of the work on this project itself, County shall abide by the provisions of the Nebraska Fair Employment Practices Act as provided by Neb. Rev. Stat. §§ 48-1101, through 48-1126.

SECTION 9. LAWFUL PRESENCE IN USA AND WORK ELIGIBILITY STATUS PROVISIONS

County agrees to comply with the requirements of Neb. Rev. Stat. §§ 4-108 to 4-114 with its project, including, but not limited to, the requirements of § 4-114(2) to place in any contract it enters into with a public contractor a provision requiring the public contractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

SECTION 10. ENTIRE AGREEMENT

This agreement contains the entire agreement of County and State. No representations were made or relied upon by County or State other than those that are expressly set forth herein. No agent, employee or other representative of County or State is empowered to alter any of the terms in this agreement unless done in writing and signed by an authorized officer of the County and State.

IN WITNESS WHEREOF, the Parties hereby execute this agreement pursuant to lawful authority as of the date signed by each party.

EXECUTED by the County this 6 day of March, 2018.

WITNESS:

LANCASTER COUNTY



County Clerk



Chair, Board of Commissioners

EXECUTED by the State this _____ day of _____, 2018.

STATE OF NEBRASKA
DEPARTMENT OF TRANSPORTATION
Mick Syslo

Materials and Research Engineer